

Tentative Rulings for July 1, 2013

Department 2G

**To request oral argument, you must notify Barbara Berg at
(760) 904-5722 and inform all other counsel no later than 4:00 p.m.**

1.

INC 1204922	Wells Fargo Bank v. Uriostegui	Motion for Summary Adjudication on of Judicial Foreclosure Cause of Action by Plaintiff Wells Fargo Bank, N.A.
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Tentative Ruling: Deny.

There a triable issue of fact whether a deficiency judgment is barred by California Code of Civil Procedure section 580b. Plaintiff argues that because there is no dwelling on the land purchased with the loan proceeds, section 580b does not apply. *Paramount Savings & Loan Assn v. Barber* (1968), 263 Cal.App.2d 166, 167-169 (section 580b did not apply to construction loan). *Paramount*, however, is not controlling because it was decided under a former version of the statute. *Prunty v. Bank of America* (1974) 37 Cal.App.3d 430, 437, 440 (section 580b applied to plaintiffs who gave a deed of trust to defendant bank for a construction loan, and built a residence, which was demolished in a natural disaster). Under the present language, liberally construed to effectuate the legislative purpose, the words "purchase" and "purchaser" are sufficiently flexible to cover the owner who finances and builds a dwelling as well as the person who acquires the land itself for the construction of a dwelling. The amended statute's application to residential construction borrowers also serves the statutory purpose of avoiding the aggravation of a depression in land values that would result if defaulting purchasers lost the land and were burdened with personal liability. *Id.* at 440. Plaintiffs were in process of building their home when they encountered economic difficulties and were unable to complete their plans (Uriostegui Decl., at 1-2, exhs. A-J).

2.

INC 1300673	Kimberly C. v. Desert Sands Unified School District	Demurrer to First Amended Complaint by Defendants Desert Sands Unified School District, Theresa Kachiroubas
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Tentative Ruling: Sustain demurrer by DSUSD to fourth cause of action without leave to amend because school district cannot be liable for intentional infliction of emotional distress. Public entity liability is based upon statute. (*Cal. Gov't Code* § 815; *Ellerbee v. County of Los Angeles* (2010) 187 Cal.App.4th 1206, 1214; *Wright v. State* 122 Cal.App.4th (2004) 659, 672.) Plaintiffs have not alleged any statutory basis for liability.

Sustain demurrer of Kachiroubas to second and third causes of action because there is no allegation that she engaged in conduct that constituted sexual harassment or sexual assault or battery, nor can she be vicariously liable because there is no alleged principal/agent relationship. No tentative ruling as to the fourth cause of action; appearances requested to discuss this cause of action.

3.

INC 1300673	Kimberly C. v. Desert Sands Unified School District	Motion to Strike Punitive Damages Requests in Plaintiffs' First Amended Complaint by Defendant Theresa Kachiroubas
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Tentative Ruling: No tentative ruling, appearances required to discuss whether facts alleged in fourth cause of action justify an award of punitive damages against defendant Kachiroubas.